



IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1045

BERGEN COUNTY ASSOCIATES, EAST RUTHERFORD INVESTMENT CORP., BRANCASONS, INC., DEANNA INDUSTRIES, INC., INDUSTRIAL CONSTRUCTION ASSOCIATES, and BERGEN COUNTY ASSOCIATES SUNOCO,

Petitioners,

vs.

BOROUGH OF EAST RUTHERFORD, a Municipal Corporation, and DIVISION OF TAX APPEALS IN THE DEPARTMENT OF THE TREASURY, STATE OF NEW JERSEY,

Respondents.

(Consolidated Cases)

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

ALFRED A. PORRO, JR.,
Counsel for Respondent,
Borough of East Rutherford,
10 Stuyvesant Avenue,
Lyndhurst, New Jersey 07071.
(201) 438-1923

TONITA S. CONAGHAN,
On the Brief.

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Questions Presented for Review

1. If a State agency possessing land use control powers imposes a temporary moratorium on development of real estate, does such action as a matter of law render the land less valuable for *ad valorem* property tax purposes.
2. Where real property is burdened by a cloud on the title, even if such cloud is caused by the alleged claim of a State, is it Constitutionally mandated that such state of facts be considered in assessing the property for municipal real estate taxes.
3. Whether a taxpayer has been denied equal protection of the laws or denied substantive due process in violation of the 14th Amendment of the United States Constitution where a State Appellate Court rules that the evidence does not sustain the allegation that real estate became less valuable for local property assessment purposes because of State agency imposed temporary moratoria on development.
4. Whether the refusal of a State Appellate Court to correct alleged arithmetic mistakes in the administrative determination of a property tax assessment is a denial of procedural due process.

REASONS FOR DENYING CERTIORARI

POINT I

No substantial federal question has been determined by a State Court and no special and important reasons have been presented warranting the granting of certiorari.

Petitioners have presented three reasons in urging the Court to grant certiorari, however, an analysis of these reasons reveals that no special and important reasons for such a grant exist, as required by Rule 19.

Furthermore, while due process and equal protection considerations are involved in this matter, no Federal question of substance has been decided meriting review by this Court. Respondents will answer in this single point.

Petitioners state that since some of the land involved was burdened by a moratoria on development through the zoning power of the Hackensack Meadowlands Development Commission (H.M.D.C.), they have been denied 14th Amendment equal protection and due process. It is submitted that the State Superior Court, Appellate Division decided the issue based upon the evidence presented, and, therefore, the Constitutional rights of Petitioners were not denied.

The Appellate Division said:

"Appellants also contend that the value of the properties should have been depreciated by a factor reflecting the freeze on development due to temporary zoning regulations of the Hackensack Meadowlands Development Commission to certain portions of the meadowlands during a planning phase. (Citation omitted). This contention was rejected

below in the absence of proof that property values fell because of the temporary halt in development. The activities of the Hackensack Meadowlands Development Commission, in planning for the comprehensive growth and development of the area, could very well have caused an appreciation of the value of constituent parts of the meadowlands, despite, and even during, a temporary stay of development. We find the state of the evidence justified the ruling below." (Pa27)

It is clear upon reading the above statement as a whole, that the Appellate Division denied relief to the Taxpayers because they failed to support their claims of decreasing property values by competent evidence. The State Appellate Court did not hold, nor even intend to imply, that property values appreciated during or because of the planning phase, as urged by Petitioners (Pb14). Petitioners are attempting to have this Court accept their contention that property values fell because of the moratorium, when they were unable to prove it as fact on the trial level, under the guise of a deprivation of a Constitutional right. A mere review of the evidence is not a basis upon which the Supreme Court will grant certiorari. *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175 (1938).

Petitioners' argument that property claimed by the State of New Jersey as riparian lands should be assessed differently than property not so claimed in order to comport with due process concepts is without merit. The issue was faced squarely by the New Jersey Courts in *Town of Secaucus v. Damsil, Inc.*, 120 N.J. Super. 470 (App. Div. 1972), *cert. den.* 62 N.J. 90 (1972). The Court

ruled that the market value of property is the controlling criterion in determining its tax assessment, and not the status of its title.

Petitioners urge this Court to review the *Damsil* decision, and this case, because the State Courts have erroneously equated tideland disputes with private title disputes (Pb22). This is simply not so. In both cases the Courts ruled that for local property tax assessment, the full and fair value must be determined in accordance with N.J.S.A. 54:4-23, regardless of title claims by the State. It should be noted here that once again an evidence problem on the part of Petitioners emerges. The Appellate Division stated:

"Appellants (Petitioners) contend that the property should be deemed exempt, or should be assessed at minimal values, until the title dispute is resolved. But the evidence shows that appellants have sold and substantially developed similar property despite such claims. Moreover, appellants may succeed in refuting the State's claims." (Pa34).

While the Supreme Court has the power to examine the records of the State Court proceedings, it customarily accepts the results of the State Court's examinations. *Pennekamp v. State of Florida*, 328 U.S. 331 (1946). It is submitted that the New Jersey Court in this case operated consistently with the United States Constitution in denying Petitioners' claims for reduction of tax assessments, because there was no evidence presented to it supporting a claim of diminution of value by reason of the State's riparian claim.

Petitioners make blanket assertions tending to create the attitude that this case presents important and special reasons meriting this Court's review. For instance, Peti-

tioners attempt to equate the H.M.D.C. planning moratorium with building moratoria relating to flood-plain, sewerage capacity and other environmental problems (Pb8). The H.M.D.C. planning moratorium was short-lived, beneficial and local. Its affect on taxation of local properties does not give rise to issues important to the public, as distinguished from importance to particular parties. Therefore, the issues here involved do not meet the test of the concept of importance as a basis for certiorari. *Layne & Bowler Corp. v. Western Well Works*, 262 U.S. 387 (1923); *Rice v. Sioux City Cemetery*, 349 U.S. 70 (1954).

Petitioners assert that arithmetic mistakes occurred in the determinations of the New Jersey Division of Tax Appeals and that such were disregarded by the Appellate Division. This, it is claimed, was a denial of procedural due process. Petitioners go so far as to point out an alleged mistake (Pb13).

However, Petitioners failed to point out to this Court that the alleged mistake in multiplication by the Division of Tax Appeals occurred in connection with a parcel that was not even the subject of an appeal to the Appellate Division. The Appellate Court took the time to painstakingly correlate the myriad docket numbers and lot and block numbers under consideration. The State Court determined that "no appeal has been taken from assessments fixed for some of the parcels which were involved in the proceedings below." (Pa36). One such parcel was Block 105B, Lots 27 through 31, and this is the parcel where the Judge's arithmetic was supposedly faulty.

The manner of determining the propriety of the municipal assessments by the Division of Tax Appeals was fully briefed for the Appellate Division, property by property. There is absolutely no basis for the assertion that

the Appellate Division's consideration of the case "was really non-existent and an illusion only." (Pb13).

This is surely a case where Petitioner is urging this Court to grant certification to merely review facts and evidence. It has consistently been held by this Court that it will not review evidence and discuss specific facts. *Fry Roofing Co. v. Wood*, 344 U.S. 157 (1952); *United States v. Johnston*, 268 U.S. 220 (1925).

The taxing power of a State and its political subdivisions is a sovereign power of great magnitude. Great leeway is permitted by the Supreme Court to the States in their implementation of taxation. This Court has determined in many cases that due process and equal protection were not abused by States in disputes over taxes. See, e.g., *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Nashville C & St. L.R. Co. v. Browning*, 310 U.S. 362 (1940); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937).

In summary, the Petitioners have not presented important and special reasons for granting their petition and they have not demonstrated that their Constitutional rights may have been abused by State action.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the instant petition for writ of certiorari be denied.

Respectfully submitted,

ALFRED A. PORRO, JR.,
Counsel for Respondent,
Borough of East Rutherford,

TONITA S. CONAGHAN,
On the Brief.